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UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICK DEAL,

Defendant.

Criminal Action
No. 04-10185-GAO

EXCERPTED TRANSCRIPT OF SENTENCING HEARING
STATEMENT OF REASONS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

United States District Court
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
July 7, 2005
2:30 p.m.

* * * * *

SHELLY M. KILLIAN, CM
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Room 3510
Boston, MA 02210
(617) 737-7117

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APPEARANCES:

For the Plaintiff:

William H. Connolly
United States Attorney's Office
John Joseph Moakley Federal Courthouse
1 Courthouse Way, Suite 9200

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5 Boston, Massachusetts 02210

6 For the Defendant:

7 Diana K. Lloyd, Attorney at Law
Choate, Hall & Stewart

8 Exchange Place
53 State Street

9 Boston, Massachusetts 02109-2804

10 Probation Officer: Stephanie Henshaw

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1 P R O C E E D I N G S

2 (The following proceedings were held in open court
3 before the Honorable George A. O'Toole, Jr., United States
4 District Judge, United States District Court, District of
5 Massachusetts, at the John J. Moakley United States Courthouse,
6 1 Courthouse Way, Boston, Massachusetts, on July 7, 2005.

7 The defendant, Patrick Deal, is present with
8 counsel. Assistant United States Attorney William Connolly is
9 present.)

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(Excerpt begins.)

THE COURT: Well, as to the defendant's motions, the 5K2.0, I do not think the conditions justify a departure within the jurisprudence that developed under the guidelines when they were mandatory. So those motions would be denied.

The government's motion under 5K1.1 is granted. And I agree with the defendant that one-level of the sentencing table is not much of a recognition of the cooperation in this case, which I think did, it seems probable, expose the defendant to some personal risk, perhaps even physical violence, particularly as events unfolded. Defining the adjustment how much more than one it will be, whether two or three, is really sort of -- can come close to mathematical quibbling, particularly in an environment where some of the Scriptures of the guidelines are no longer necessarily applicable. I think it's appropriate to perhaps, just for the

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sake of articulating it, depart three levels to a level 10. That would have a presumptive range of six to 12 months.

Now, having reference to the other factors, there are two factors that stand out here, I think, as needing some consideration. Let me put aside the ones that don't. I agree with the defendant that in terms of specific deterrence, there's -- that's not a driving factor in this sentence. I think that Mr. Deal recognizes the error and is unlikely to repeat it. So I'm not influenced by that.

There is some role for general deterrence, and that relates to one of the other factors that I think is important, and that is recognizing the seriousness of the offense. This is a sizable amount of counterfeit money brought in from outside the U.S. and it is not a trivial offense and somehow

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15 the sentence ought to take account of that.

16 One of the other factors that we are now more free
17 to give effect to under the post-Booker -- in the post-Booker
18 environment is the factor which asks the Court to consider the
19 types of sentences that are available. I think that's more
20 than simply recognizing that there are things that are legally
21 available and suggests that the availability ought to be tied
22 in some way to the particular circumstance of the case and
23 suggests some ability to tailor the sentence appropriately,
24 without necessarily being bound by requirements of the
25 guidelines.

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1 So my resolution is to impose a period of three
2 years of probation, the first 12 months to be spent in home
3 confinement. I choose 12 months -- it's at the high end of the
4 six to 12 range, but it is of course -- I'm going to treat it
5 as nonimprisonment. I think that gives recognition to the
6 seriousness of the offense. There's got to be some bite to the
7 penalty. On the other hand, I think home confinement and
8 probation permits the defendant to continue in his employment
9 and to get his feet on the ground in the real world. So I
10 think that's why I choose that combination.

11 Now, I recognize that the guidelines, if they were
12 mandatory, would limit the ability to make the entire period a
13 home confinement period. It would have to be an exchange,
14 some -- Zone B this would be -- at least one month would have
15 to be imprisonment. But since that is simply advice now and
16 not a mandate, I choose not to follow it; and there will be no
17 period of imprisonment, even though if it was strictly under
18 the guidelines, it would have to be. So it will be all home
19 confinement under the conditions of probation.

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20 MS. LLOYD: May I ask a question? In addition to
21 being permitted to continue to work, I assume Mr. Deal will be
22 -- he's also been trying to gain some secondary employment,
23 looking for a second job. I assume he would be able to
24 continue to do that and to go to doctor's appointments and --

25 THE COURT: Well, yes, there are -- sure.

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1 Probation can fill in the details. There are -- I think
2 there's a protocol that is customary.

3 Perhaps can you just tell us briefly about it.

4 PROBATION OFFICER: Yes, there is a schedule that
5 will be worked out with the supervision officer. And there is
6 time allowed to do mandatory stuff, employment, doctor's
7 appointments, church, anything like that. But that will be
8 worked out with you and the officer.

9 THE COURT: So, Mr. Deal, if you'd stand. Patrick
10 Deal, on your conviction of this offense and pursuant to the
11 Sentencing Reform Act of 1984, it is the judgment of the Court
12 that you be and you hereby are placed on probation for a term
13 of three years.

14 While you're on probation, you shall not commit any
15 other federal, state, or local crime. You shall refrain from
16 the unlawful use of any controlled substance and shall submit
17 to a drug test within 15 days of your commencement of probation
18 and at least two periodic drug tests thereafter, as may be
19 directed by your probation officer, not to exceed a total of
20 104 tests in any given year.

21 You are to cooperate with your probation officer in
22 the collection of a DNA sample.

23 In addition, you are to comply with all the
24 standard conditions made applicable to the status of probation

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25 by the Sentencing Guidelines. Those conditions are set forth

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1 in the guidelines at Section 5B1.3(c), and they're incorporated
2 by reference.

3 In addition, you shall comply with the following
4 special conditions: You are prohibited from possessing a
5 firearm or other dangerous weapon. You are to serve the first
6 12 months of your probation in home detention with electronic
7 monitoring and will be liable to pay the daily fee required for
8 each day under electronic monitoring. You are to participate
9 in any program for substance abuse counseling or mental health
10 counseling, as may be directed by your probation officer. In
11 the case of substance abuse counseling, it may include random
12 testing, not to exceed 104 tests in a given year. And you may
13 be required to contribute to the costs of any such program
14 based either on your ability to pay or on the availability of
15 third-party reimbursement.

16 I will not impose a monetary fine in view of the
17 financial circumstances and obligations disclosed in the
18 report. There is a mandatory special assessment in the sum of
19 \$100.

20 THE CLERK: Mr. Patrick Deal, you have the right to
21 file a Notice of Appeal in this case. If you do wish to file
22 an appeal, you must file it within ten days from the date the
23 judgment is entered. If you cannot afford an attorney to file
24 the appeal on your behalf, you may request the clerk of the
25 Court to file it for you, and I will do so. Do you understand

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1 sir?

2 THE DEFENDANT: Yes, sir.

3 Thank you, your Honor.

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4 THE COURT: All right, thank you.
5 MS. LLOYD: Thank you, your Honor.
6 (Adjourned, 2:42 p.m.)
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